

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELROY W. BROWNING,

Plaintiff,

v.

JEANNE WOODFORD, et al.,

Defendants.

CASE NO. 1:05-cv-00342-AWI-NEW (DLB) PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTIVE RELIEF
BE DENIED

(Doc. 89)

Plaintiff Elroy W. Browning ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On February 22, 2007, plaintiff filed a motion seeking an order mandating that law library staff members be properly trained, that prisoners have access to the courts and their legal actions not be obstructed, that inmates with court deadlines be escorted in waist restraints to the law library during lock-down, and that inmates be provided two hours of physical access to the law library during lock-down. Defendants did not file a response.

The purpose of a preliminary injunction is to preserve the status quo if the balance of equities so heavily favors the moving party that justice requires the court to intervene to secure the positions until the merits of the action are ultimately determined. University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). A preliminary injunction is available to a plaintiff who "demonstrates either (1) a combination of probable success and the possibility of irreparable harm, or (2) that serious questions are raised and the balance of hardship tips in its favor." Arcamuzi v. Continental Air Lines, Inc., 819 F. 2d 935, 937 (9th Cir. 1987). Under either approach the plaintiff "must

1 demonstrate a significant threat of irreparable injury.” Id. Also, an injunction should not issue if the
2 plaintiff “shows no chance of success on the merits.” Id. At a bare minimum, the plaintiff “must
3 demonstrate a fair chance of success of the merits, or questions serious enough to require litigation.”
4 Id.

5 Federal courts are courts of limited jurisdiction, and as a preliminary matter, the court must
6 have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103
7 S.Ct. 1660, 1665 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church and
8 State, Inc., 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982); Jones v. City of Los Angeles, 444 F.3d
9 1118, 1126 (9th Cir. 2006). If the court does not have an actual case or controversy before it, it has
10 no power to hear the matter in question. Id.

11 This action is proceeding against defendants for use of excessive physical force, in violation
12 of the Eighth Amendment. Any orders relating to law library access and competency of law library
13 staff would not remedy the claim upon which this action proceeds. The court therefore lacks
14 jurisdiction to issue the order sought by plaintiff, and HEREBY RECOMMENDS that plaintiff’s
15 motion for preliminary injunctive relief, filed February 22, 2007, be DENIED.

16 These Findings and Recommendations will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**
18 **days** after being served with these Findings and Recommendations, plaintiff may file written
19 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
20 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
21 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
22 1153 (9th Cir. 1991).

23
24 IT IS SO ORDERED.

25 **Dated: March 27, 2007**
26 3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE